

REMARKS

In the Office Action, the Examiner objected to claims 7 and 22, and rejected claims 1-6 and 8-21. By this paper, Applicants have amended claims 13-15 to expedite allowance of the present application. These amendments do not add any new matter. Upon entry of these amendments, claims 1-22 are pending in the present application and are believed to be in condition for allowance. In view of the foregoing amendments and the following remarks, Applicants respectfully request reconsideration and allowance of all pending claims.

Allowable Subject Matter

In the Office Action, the Examiner indicated that claims 7 and 22 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicants would like to thank the Examiner for indicating that claims 7 and 22 would be allowable in independent form. However, in view of the amendments set forth above and the arguments presented below, Applicants respectfully assert that all of the pending claims are in condition for allowance.

Claim Rejections under 35 U.S.C. § 102

In the Office Action, the Examiner rejected claims 1, 6, 13, and 17-20 under 35 U.S.C. § 102(e) as being anticipated by Mantha et al. (U.S. Pub. No. 2004/0023622, hereafter referred to as “the Mantha reference”). Applicants respectfully traverse this rejection.

Legal Precedent

Anticipation under Section 102 can be found only if a single reference shows exactly what is claimed. *See Titanium Metals Corp. v. Banner*, 227 U.S.P.Q. 773 (Fed. Cir.1985). For a prior art reference to anticipate under Section 102, every element of the claimed invention must be identically shown in a single reference. *See In re Bond*, 15 U.S.P.Q.2d 1566 (Fed. Cir.1990). That is, the prior art reference must show the *identical invention* “*in as complete detail as contained in the ... claim*” to support a *prima facie* case of anticipation. *Richardson v. Suzuki Motor Co.*, 9 U.S.P.Q. 2d 1913, 1920 (Fed. Cir. 1989) (emphasis added). Thus, for anticipation, the cited reference must not only disclose all of the recited features but must also disclose the *part-to-part relationships* between these features. *See Lindermann Maschinenfabrik GMBH v. American Hoist & Derrick*, 221 U.S.P.Q. 481, 486 (Fed. Cir.1984). Accordingly, Applicants need only point to a single element or claimed relationship not found in the cited reference to demonstrate that the cited reference fails to anticipate the claimed subject matter. A *strict correspondence* between the claimed language and the cited reference must be established for a valid anticipation rejection.

Moreover, Applicants submit that, during patent examination, the pending claims must be given an interpretation that is *reasonable* and *consistent* with the specification. *See In re Prater*, 162 U.S.P.Q. 541, 550-51 (C.C.P.A. 1969); *In re Morris*, 44 U.S.P.Q.2d 1023, 1027-28 (Fed. Cir. 1997); see also M.P.E.P. § 2111 (describing the standards for claim interpretation during prosecution). Indeed, the *specification* is “the primary basis for construing the claims.” *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1315 (Fed. Cir. 2005) (citations omitted). It is usually

dispositive. *See id.* Interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach. *See In re Cortright*, 49 U.S.P.Q.2d 1464, 1468 (Fed. Cir. 1999); *see also* M.P.E.P. § 2111. That is, recitations of a claim must be read as they would be interpreted by those of ordinary skill in the art. *See Rexnord Corp. v. Laliram Corp.*, 60 U.S.P.Q.2d 1851, 1854 (Fed. Cir. 2001); *see also* M.P.E.P. § 2111.01. In summary, an Examiner, during prosecution, must interpret a claim recitation as one of ordinary skill in the art would reasonably interpret the claim in view of the specification. *See In re American Academy of Science Tech Center*, 70 U.S.P.Q.2d 1827 (Fed. Cir. 2004).

Independent claim 1, 13 and 19

Independent claim 1 recites, *inter alia*, “A device for allocating power comprising: a power sharing module configured...to determine from the plurality of signals whether a first service *system* corresponding to a first wireless service has un-utilized transmission power; and a scheduler of a second service *system* corresponding to a second wireless service configured to...utilize the indication to allocate the un-utilized transmission power for the second wireless service.”

(Emphasis added). Independent claim 13 recites, *inter alia*, “A method for allocating transmission power comprising: providing a first wireless service *system* and a second wireless service *system*....determining from the plurality of input signals whether the second wireless service *system* may utilize transmission power from the first wireless service *system*; and allocating transmission power to the second wireless service *system* from the first wireless service *system*.” (Emphasis added). Independent claim 19 recites, *inter alia*, “A method for allocating power, the method comprising the acts of: receiving a plurality of input signals corresponding to at least one predicted

power allocation for a first wireless service *system* and at least one current power allocation for the first wireless service *system* and a second wireless service *system*....providing an indication to allocate non-utilized transmission power from the first wireless service *system* to the second wireless service *system* to a scheduler.” (Emphasis added). Thus each of the independent claims 1, 13 and 19 recite power allocation between a two service systems.

In sharp contrast, the Mantha reference does not disclose power allocation between two service systems. The Mantha reference only discloses power allocation between two services, *i.e.*, voice and data. Specifically, the Mantha reference describes a system 20 having a base station 24 which provides a downlink 40 that includes signaling channels, voice channels, and data channels. *See* FIG. 1; paragraph [0048]. The base station 24 allocates power from the voice channels to the data channels to utilize substantially all of a power budget of the base station 24. *See* paragraphs [0056]- [0069]. The voice and data channels, however, cannot reasonably be considered the equivalent of the first and second *systems* recited in claims 1, 13 and 19. Indeed, the data and voice *services* referred to in the Mantha reference are merely two separate services of a *single* system. As such, the Mantha reference may appropriately be characterized as disclosing only power allocation between two services within a single system. Therefore, the Mantha reference fails to disclose power allocation between *two service systems* as set forth in claims 1, 13 and 19.

Accordingly, Applicants respectfully request withdrawal of the Section 102 rejection and allowance of independent claims 1, 13 and 19, as well as all claims depending therefrom.

Claim Rejections under 35 U.S.C. § 103(a)

In the Office Action, the Examiner rejected claims 2-5, 14-16, and 21 under 35 U.S.C. § 103(a) as being unpatentable over the Mantha reference in view of Jeon et al. (U.S. Pub. No. 2004/0253928, hereafter referred to as “the Jeon reference”); rejected claims 8 and 10 under 35 U.S.C. § 103(a) as being unpatentable over the Mantha reference in view of Kang (U.S. Pub. No. 2001/0016503, hereafter referred to as “the Kang reference”); rejected claim 9 under 35 U.S.C. § 103(a) as being unpatentable over the Mantha reference in view of the Kang reference and further in view of Hongo et al. (U.S. Pub. No. 2003/0022639, hereafter referred to as “the Hongo reference”); and rejected claims 11-12 under 35 U.S.C. § 103(a) as being unpatentable over the Mantha reference in view of the Kang reference and further in view of the Jeon reference. Applicants respectfully traverse these rejections.

Legal Precedent

The burden of establishing a *prima facie* case of obviousness falls on the Examiner. *Ex parte Wolters and Kuypers*, 214 U.S.P.Q. 735 (B.P.A.I. 1979). Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention absent some teaching or suggestion supporting the combination. *ACS Hospital Systems, Inc. v. Montefiore Hospital*, 221 U.S.P.Q. 929, 933 (Fed. Cir. 1984). The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 16 U.S.P.Q.2d. 1430 (Fed. Cir. 1990). Accordingly, to establish a *prima facie* case, the Examiner must not only show that the combination includes *all* of the claimed elements, but also a convincing line of reason as to why

one of ordinary skill in the art would have found the claimed invention to have been obvious in light of the teachings of the references. *Ex parte Clapp*, 227 U.S.P.Q. 972 (B.P.A.I. 1985).

Independent claim 8

Independent claim 8 recites, *inter alia*, “A base station comprising... a first baseband service *system* that communicates with a first group of the plurality of wireless units via a first plurality of communication channels; and a second baseband service *system* that communicates with a second group of the plurality of wireless units via a second plurality of communication channels, the second baseband service system comprising...a scheduler configured to receive an indication to allocate un-utilized transmission power to the second baseband service *system* from the first baseband service *system* and to utilize the indication to allocate un-utilized transmission power for the second plurality of communication channels.” (Emphasis added).

In sharp contrast, the Mantha reference and the Kang reference, taken alone or in hypothetical combination, do not disclose allocation of un-utilized transmission power to a second baseband service system from a first baseband service system as set forth in claim 8. Specifically, as set forth in detail above, the Mantha reference only discloses allocating power from a voice service to a data service within a *single system*. Therefore, the Mantha reference fails to disclose allocation of power to a second baseband service system from a first baseband service system. The Kang reference fails to overcome this deficiency. Specifically, the Kang reference is directed decreasing deterioration of call quality in a CDMA system. See Kang paragraph [0020]. The Kang reference, however, does not disclose allocation of power to a

second baseband service system from a first baseband service system as set forth in claim 8. As such, the Kang reference fails to obviate the deficiencies of the Mantha reference and the Mantha reference and the Kang reference, taken alone or in hypothetical combination, fail to disclose all the elements of claim 8.

Accordingly, Applicants respectfully request withdrawal of the Section 103 rejection of independent claim 8 and all claims dependent therefrom. Furthermore, Applicants respectfully request allowance of independent claim 8 and all claims dependent therefrom.

Claims 2-5, 11-12, 14-16 and 21

Applicants respectfully assert that claims 2-5, 11-12, 14-16 and 21 are allowable based on their dependency from allowable independent claims. As discussed above with respect to the independent claims, the Mantha reference and the Kang reference, taken alone or in hypothetical combination, fail to disclose allocation of power from a first system to a second system. The Jeon reference fails to obviate the deficiencies of the Mantha reference and the Kang reference. Similar to the Mantha reference, the Jeon reference is directed to power allocation between a real-time service, such as voice or video, and a non-real-time service, such as a packet service of a single system. *See* Jeon paragraphs [0005]-[0007] and [0028]. The Jeon reference, however, does not disclose power allocation between two systems as set forth in the claims of the present application. As such, the Jeon reference fails to obviate the deficiencies of the Mantha reference and the Kang reference. Accordingly, Applicants respectfully request withdrawal of the Section 103 rejection and allowance of claims 2-5, 11-12, 14-16 and 21.

Claim 9

Applicants respectfully assert that claim 9 is allowable based on its dependency from claim 8. As discussed above, the Mantha and Kang references, taken alone or in hypothetical combination, fail to disclose the allocation of transmission power to a second baseband service system from a first baseband service system as set forth in claim 8. The Hongo reference fails to obviate the deficiencies of the Mantha and Kang references with respect to independent claim 8. Specifically, the Hongo reference is directed to a peak limiter. *See* paragraph [0001]. The Hongo reference, however, does not disclose allocation of transmission power to a second baseband service system from a first baseband service system as set forth in claim 8. Accordingly, the Hongo reference fails to obviate the deficiencies of the Mantha and Kang references. Accordingly, Applicants respectfully request withdrawal of the rejection and allowance of claim 9

In view of the foregoing discussion, Applicants respect withdrawal the Section 103 rejection and allowance of all pending claims.

Conclusion

Applicants respectfully submit that all pending claims should be in condition for allowance. However, if the Examiner wishes to resolve any other issues by way of a telephone conference, the Examiner is kindly invited to contact the undersigned attorney at the telephone number indicated below.

Respectfully submitted,

Date: November 27, 2006



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